

[Counsel listed on signature page.]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE DITROPAN XL ANTITRUST  
LITIGATION

MDL No. 1761 (JSW)

This Document Relates to:  
INDIRECT PURCHASER ACTION

**STIPULATION AND ~~[PROPOSED]~~  
ORDER FOR THIRD  
AMENDMENT TO CASE  
MANAGEMENT ORDER NO. 2 TO  
EXTEND CASE SCHEDULE**

Hon. Jeffrey S. White

**STIPULATION AND ~~[PROPOSED]~~ ORDER**

1. On October 27, 2006, the Court held an initial case management conference pursuant to Local Rule 16-10(a) and Federal Rule 16. As a result of that conference, the Court entered Stipulated Case Management Order No. 2 on November 1, 2006.

2. That Order has since been amended twice. Most recently, on August 28, 2007, the Court entered a Stipulation and Order for Second Amendment to Case Management Order No. 2 to Extend the Schedule.

3. On June 26, 2007, the Indirect Purchaser Plaintiffs ("Plaintiffs") filed their motion for class certification with a supporting expert declaration. Defendant Alza Corporation's opposition brief to Plaintiffs' class certification motion is currently due on November 27, 2007.

4. In response to document requests served by Plaintiffs in December 2006, Alza Corporation ("Alza" or "Defendant") produced over 626,000 pages of documents. Alza began rolling its production of documents in March 2007 and, pursuant to Paragraph 6 of Magistrate Judge Laporte's Order Regarding Discovery Procedures, Alza certified on August 22, 2007 that it

1 had produced to Plaintiffs all of the materials from its initial collection of documents that it  
2 agreed to produce and that could be located after a diligent search. Alza completed on  
3 October 19, 2007 its supplemental production of documents pursuant Paragraph 4 of Magistrate  
4 Judge Laporte's Order Regarding Discovery Procedures. Various non-party corporate affiliates  
5 of Defendant, in response to third-party subpoenas issued by federal courts outside this District,  
6 have now produced documents to Plaintiffs totaling in the aggregate over 319,000 pages, and  
7 several of these third-party productions are still on-going.

8 5. Alza served document requests on Plaintiffs in January 2007. After Plaintiffs  
9 began producing documents in March and April 2007, the parties began to confer about the  
10 adequacy of Plaintiffs' discovery responses, including Plaintiffs' production of documents and  
11 data. Following the October 2007 Rule 30(b)(6) depositions of two of the named plaintiffs, Alza  
12 raised concerns about the completeness of the Plaintiffs' discovery responses. Plaintiffs have  
13 agreed to review the completeness of their discovery responses, provide any supplemental  
14 responses or information, and provide a certification under Paragraph 6 of Magistrate Judge  
15 Laporte's Order Regarding Discovery Procedures.

16 6. Alza and Plaintiffs conferred on October 23, 2007, October 29, 2007, and  
17 November 2, 2007 regarding various discovery and case scheduling issues. Plaintiffs and Alza  
18 have each taken initial Rule 30(b)(6) depositions and contemplate taking additional depositions  
19 in the coming months. The parties mutually agree, however, that it is not practicable to proceed  
20 with certain depositions until relevant document productions have been completed. This is the  
21 principal impetus for the parties' proposed extension of the schedule.

22 7. The schedule originally contemplated by the parties and set forth in the second  
23 amendment to CMO No. 2 provided several months for Alza to analyze the documents, data, and  
24 expert reports provided by Plaintiffs relating to class certification issues and to conduct expert  
25 and fact depositions before being required to submit its opposition to Plaintiffs' motion for class  
26 certification. The second amendment to CMO No. 2 also assumed that Plaintiffs would have  
27 several months to complete depositions in advance of the summary judgment briefing regarding  
28 issues in Paragraphs 3(b), 3(c), and 3(d) of CMO No. 2. Given that document production is still

ongoing and that the parties have mutually agreed to postpone certain depositions until such productions are complete, the parties mutually agree that a further scheduling extension is needed to preserve the time periods contemplated by the second amendment to CMO. 2.

8. The parties have agreed and hereby stipulate (subject to the Court's order allowing them to do so) that the deadlines for Defendant's opposition to Plaintiffs' class certification motion and any reply brief to be filed by Plaintiffs each be extended by approximately 90 days. In addition, the parties have agreed that the remaining dates and deadlines established by CMO No. 2 shall likewise be extended by approximately 120 days (with the exception of the deadline for written discovery relating to the issues set forth in Paragraph 3(b)-3(d) of CMO No. 2, as discussed in Paragraph 9 below). Specifically, the parties stipulate to the following amendments to CMO No. 2:

		<u>CMO No. 2</u>	<u>Amend. #1</u>	<u>Amend #2</u>	<u>Amend #3</u>
Motion For Class Certification and Expert Reports in Support of Class Certification	Deadline for Defendants to depose Plaintiffs' experts, respond to motion, and file their expert reports:	July 27, 2007	Sept. 25, 2007	Nov. 27, 2007	Feb. 29, 2008
	Deadline for Plaintiffs to depose Defendants' experts and file reply:	Aug. 24, 2007	Oct. 23, 2007	Dec. 21, 2007	Mar. 28, 2008
	Hearing:	Sept. 14, 2007	Nov. 16, 2007	Jan. 11, 2008	April 18, 2008 <del>TBD by Court</del>

		<u>CMO No. 2</u>	<u>Amend. #1</u>	<u>Amend #2</u>	<u>Amend #3</u>
Motion For Summary Judgment or Partial Summary Judgment Regarding Issues in Paragraphs 3(b) through 3(d) of CMO No. 2 and Expert Reports in Support of Summary Judgment	Opening Motion and supporting expert reports:  Cross Motion and Opposition Motion and supporting expert reports:  Opposition to Cross Motion (and supporting expert reports) and Reply in Support of Opening Motion:  Reply in Support of Cross Motion:  Hearing (if no Cross Motions filed):  Hearing (If Cross Motions Filed):	October 12, 2007  November 21, 2007  December 21, 2007  January 25, 2008  January 11, 2008  February 15, 2008	December 11, 2007  January 18, 2008  February 15, 2008  March 21, 2008  March 21, 2008  April 11, 2008	February 8, 2008  March 20, 2008  April 16, 2008  May 21, 2008  May 9, 2008  June 13, 2008	June 13, 2008  July 25, 2008  August 29, 2008  October 3, 2008  October 24, 2008 <del>TBD by Court</del>  October 24, 2008 <del>TBD by Court</del>

		<u>CMO No. 2</u>	<u>Amend. #1</u>	<u>Amend #2</u>	<u>Amend #3</u>
Completion of Discovery Relating to Specific Issues in CMO No. 2	Paragraph 3(a):	July 13, 2007	September 11, 2007	Nov. 9, 2007	February 8, 2008
	Paragraphs 3(b)-(d) – Written Discovery	September 28, 2007	Nov. 16, 2007	Nov. 16, 2007	Nov. 16, 2007
	Paragraphs 3(b)-(d) – Depositions	September 28, 2007	Nov. 16, 2007	Jan. 25, 2008	May 23, 2008

9. As the schedule above indicates, there is no extension in the deadline for written discovery on the specific issues listed in Paragraphs 3(b)-(d) of CMO No. 2, and the extension of deposition deadlines imposes no further obligation to supplement written discovery responses on issues listed in Paragraphs 3(b)-(d) of CMO No. 2 pursuant to Rule 26(e)(1) or Paragraph 4 of Magistrate Judge Laporte's Order Regarding Discovery Procedures. The parties understand that, consistent with Local Rule 26-2, any motions to compel based upon written discovery responses relating to the issues set forth in Paragraphs 3(b)-(d) must be brought within seven court days of November 16, 2007. Parties may take additional written discovery pertaining to the issues set forth in Paragraphs 3(b)-(d) of CMO No. 2 only upon a showing of good cause. Nothing in this agreement, however, shall modify any party's ordinary duty to supplement its discovery responses on issues not listed in Paragraphs 3(b)-(d) under Federal Rule of Civil Procedure 26(e).

10. Nothing in this Stipulation alters or modifies any provision in CMO No. 2 except as specifically set forth in this Stipulation.

11. This stipulation for an extension of time has been brought in good faith and not for purposes of undue delay or harassment, and conforms with the requirements of Local Rules 6-2, 7-12, and 16-2(d), and with Federal Rule 16(b), which requires "a showing of good cause" for the modification of a scheduling order. Fed. R. Civ. P. 16(b).

12. Pursuant to Local Rule 16-2(d), counsel for Indirect Purchaser Plaintiffs (Tim Becker, Ed Wallace, and Jason Thompson), and counsel for Defendant (M. Sean Royall and Monique Drake) consulted about the positions set forth in this Stipulation and Proposed Order. All parties have agreed to this Stipulation.

IT IS HEREBY STIPULATED by and between the parties through their designated counsel that the Defendant shall have until February 29, 2008 to file its opposition to Plaintiffs' motion for class certification in this matter and that all deadlines contained in the Stipulated Case Management Order No. 2 (except the deadline for the completion of written discovery relating to the issues set forth in Paragraph 3(b)-(d) of that Order) be extended by the approximately 120 days, as specified in Paragraph 6 above.

**STIPULATED AND AGREED TO BY:**

DATED: November 20, 2007

/s/ Timothy J. Becker

Timothy J. Becker  
ZIMMERMAN REED, P.L.L.P.  
651 Nicollet Mall, Suite 501  
Minneapolis, MN 55402  
Telephone: (612) 341-0400  
Facsimile: (612) 341-0844

Edward A. Wallace  
WEXLER WALLACE TORISEVA LLP  
One North LaSalle Street, Suite 2000  
Chicago, IL 60602  
Telephone: (312) 346-2222  
Facsimile: (312) 346-0022

Jason J. Thompson  
J. THOMPSON & ASSOCIATES PLC  
26000 West Twelve Mile Road  
Southfield, MI 48034  
Telephone: (248) 436-8448  
Facsimile: (248) 436-8453

Jeffrey L. Kodroff  
SPECTOR, ROSEMAN & KODROFF, P.C.  
1818 Market Street, Suite 2500  
Philadelphia, PA 19103  
Telephone: (215) 496-0300  
Facsimile: (215) 496-6611

*Attorneys for Indirect Purchaser Plaintiffs*

1  
2  
3 DATED: November 20, 2007

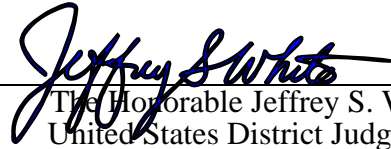
\_\_\_\_\_/s/ Michael A. Sitzman

4  
5 M. Sean Royall (admitted *pro hac vice*)  
6 Monique Michal Drake, SBN 167188  
7 Michael A. Sitzman, SBN 156667  
8 GIBSON, DUNN & CRUTCHER LLP  
9 One Montgomery Street, Suite 3100  
10 San Francisco, California 94104  
11 Telephone: (415) 393-8200  
12 Facsimile: (415) 986-5309  
13 Email: [sroyall@gibsondunn.com](mailto:sroyall@gibsondunn.com)  
14 Email: [mdrake@gibsondunn.com](mailto:mdrake@gibsondunn.com)  
15 Email: [msitzman@gibsondunn.com](mailto:msitzman@gibsondunn.com)

Attorneys for Defendant Alza Corporation

12 PURSUANT TO STIPULATION, IT IS SO ORDERED.

13  
14 Dated: November 20, 2007

\_\_\_\_\_  
15   
16 The Honorable Jeffrey S. White  
17 United States District Judge  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28